In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 894

JAMES HUBERT SALTER, APPELLANT

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 346 F. 2d 509.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 1965. A petition for rehearing was denied on November 26, 1965. By order of Mr. Justice Stewart, the time for filing a petition for a writ of certiorari was extended to and including January 11, 1966. The petition for a writ of certiorari was filed on January 10, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

208-144—66

QUESTION PRESENTED

Whether the evidence supported petitioner's conviction for violation of the Mann Act.

STATUTE INVOLVED

18 U.S.C. 2421 provides in pertinent part:

> Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice * * *.
>
> Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

An indictment in the United States District Court for the Western District of Kentucky charged in two counts that petitioner transported Barbara Williams and Linda Fitzpatrick for immoral purposes from Cleveland, Ohio, to Louisville, Kentucky, in violation of 18 U.S.C. 2421 (1 R. 3).[1] Petitioner was convicted by a jury on both counts and received a general sentence of eighteen months' imprisonment and $1,000 fine (1 R. 2, 5, 30). The court of appeals affirmed.

The evidence for the government, consisting princi-

[1] "1 R." refers to appellant's appendix in the court of appeals. "2 R." refers to the government's appendix in that court.

pally of the testimony of the two women named in the indictment, may be briefly summarized: Petitioner met Miss Williams in Cleveland in 1962 and they began living together five or six months thereafter. In January or February 1963, they moved to Birmingham, Alabama, where petitioner sold jewelry on the streets and Miss Williams worked as a barmaid. After about a month, Miss Williams moved to Louisville, where she was joined three or four days later by petitioner (2 R. 15–17). Miss Williams testified that she worked as a waitress and as a prostitute, but that petitioner supported her (2 R. 18–20). She stated that she made about $400 filling prostitution dates in Louisville (2 R. 22).

A cab driver testified that he met Miss Williams in May 1963 at a house of prostitution in Louisville and that thereafter he drove her frequently. Petitioner told the driver that he wanted Miss Williams to have only white dates (2 R. 36–38).

In May 1963, petitioner and Miss Williams went to Nashville, where they met Miss Fitzpatrick, who was working at a night club. Miss Williams testified that the purpose of the visit was to attend the graduation of a friend (2 R. 5, 27–28). Petitioner and Miss Williams went from Nashville to Cleveland, according to Miss Williams' testimony, for the purpose of obtaining license plates to replace the "ten-day tag" on petitioner's car. Miss Fitzpatrick and a boy friend also went from Nashville to Cleveland, where Miss Fitzpatrick worked as a prostitute. On account of an automobile accident, petitioner was detained in

Cleveland (2 R. 6, 10), where they stayed for approximately three weeks (2 R. 6, 11, 21). On or about June 4, petitioner drove Misses Williams and Fitzpatrick to Louisville in his car (2 R. 6, 21). Miss Fitzpatrick testified that she asked to go with petitioner because she had relatives in Louisville, and that she paid seven dollars toward the expenses (2 R. 10, 11). She testified that petitioner did not know she was coming to Louisville for the purpose of prostitution and that she did not discuss prostitution with petitioner (2 R. 6, 7, 11–12).

When she was asked, in redirect examination, "[d]id [petitioner] know that you were engaging in prostitution purposes in Cleveland," Miss Fitzpatrick replied, "Yes" (2 R. 14). She said that she did not know how he knew "unless he knew the group, knew the people," but concluded that "[h]e just knew" (2 R. 14).

When they arrived in Louisville, Miss Fitzpatrick spent the first night in a hotel room with petitioner and Miss Williams. She registered as "Sarah Blake" and they as "Mr. and Mrs. John Knight" (2 R. 7–8, 12, 33–35). Miss Fitzpatrick had prostitution dates in Louisville and gave money to petitioner once or twice. She also used petitioner's car for one of her dates. She was arrested approximately two days after her arrival in Louisville (2 R. 8–13).

ARGUMENT

There was sufficient evidence to warrant submission to the jury of the factual issue whether petitioner entertained the requisite immoral purpose in driving

Misses Williams and Fitzpatrick from Cleveland to Louisville. The women named in the indictment were the government's principal witnesses, and they obviously testified with some reluctance. It was proper for the jury, therefore, to infer petitioner's purpose from the conduct of the parties before and after the transportation and not to accept all the explanations given by the women. See *Flanagan* v. *United States,* 308 F. 2d 841 (C.A. 5), certiorari denied, 374 U.S. 838; *United States* v. *Sapperstein,* 312 F. 2d 694 (C.A. 4); *United States* v. *Farber,* 336 F. 2d 586, 588 (C.A. 6).

1. Although Miss Fitzpatrick testified that she had not discussed prostitution with petitioner and that he did not know the real purpose for which she was going to Louisville, she also stated that "he just knew" of her prostitution in Cleveland. This knowledge, when considered in conjunction with the facts that (1) she immediately entered into prostitution in Louisville, (2) she turned over part of her earnings to petitioner in the very short period before she was arrested, and (3) she borrowed his automobile for one prostitution date, warranted an inference by the jury that petitioner transported Miss Fitzpatrick to Louisville in order to benefit from her earnings as a prostitute in that city. Petitioner's prior conduct with regard to Miss Williams—including his instructions to the cabdriver—could properly be considered by the jury in determining the purpose of his conduct vis-à-vis Miss Fitzpatrick. See *Wiley* v. *United States,* 257 F. 2d 900, 906 (C.A. 8).

2. Since petitioner was sentenced for the single trip from Cleveland to Louisville irrespective of the number of women transported on that trip, see *Bell* v. *United States,* 349 U.S. 81, it makes no difference whether his transportation of Miss Williams from Cleveland to Louisville was or was not merely the last leg of "an innocent vacation trip in no way related to the practice of * * * commercial vice" within the meaning of *Mortensen* v. *United States,* 322 U.S. 369, 377. Petitioner's conduct with respect to Miss Williams would have been admissible to establish purpose and motive even if only Miss Fitzpatrick's transportation had been charged as an offense. Consequently, there is no merit to petitioner's claim that he was prejudiced by the submission of all the evidence to the jury (Pet. 30–31).

In any event, the jury, in light of all the circumstances, could have disbelieved Miss Williams' explanation of the trips to Nashville and Cleveland. There was no evidence explaining petitioner's alleged possession of "ten-day" Ohio license plates, nor was that possession consistent with the assertion that petitioner and Miss Williams considered Louisville their home and engaged only in a vacation trip to Nashville and Cleveland. The fact that they surrendered their apartment before leaving Louisville (2 R. 25) lent added support to the conclusion which the jury must have reached—under the trial judge's appropriate instructions (2 R. 40)—that the trip to Cleveland may have been for the purpose of using that city as a base for

their operations and not for the innocent purpose of obtaining license tags.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
KIRBY W. PATTERSON,
Attorneys.

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